

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0694**  
**Controlled Substance Excise Tax**  
**For Tax Period 1992**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Controlled Substance Excise Tax—Imposition**

**Authority:** IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the assessment of the Controlled Substance Excise Tax.

**STATEMENT OF FACTS**

Taxpayer was arrested for possession of Marijuana. The Indiana Department of Revenue issued an assessment of the Controlled Substance Excise Tax on December 9, 1992. Taxpayer protested the assessment. An administrative hearing was held via telephone on June 28, 2002. Additional facts will be presented as necessary.

**I. Controlled Substance Excise Tax—Imposition**

**DISCUSSION**

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

“The amount of the controlled substance is determined by:

(1) the weight of the controlled substance. . .”

Taxpayer was arrested and the controlled substance excise tax was assessed based on 2,183.40 grams of marijuana.

Pursuant to Indiana Code Section 6-8.1-5-1(b), “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.”

At hearing, taxpayer’s representative stated that taxpayer did not protest the assessment, but did not have sufficient funds to pay the assessment. Taxpayer did not offer any evidence that the assessment was invalid. As such, the taxpayer failed to meet the burden imposed by IC 6-8.1-5-1(b). The purpose of a protest is to determine the validity of the assessment, not to determine whether or not a taxpayer is able to pay the assessment.

### **FINDING**

Taxpayer’s protest is denied.

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